IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6038 of 1990

with

SPECIAL CIVIL APPLICATION No 681 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRISH N KOCHARIA

Versus

MUNICIPAL CORPORATION FOR AHMEDABAD CITY

Appearance:

1. Special Civil Application No. 6038 of 1990
   MR ARUN H MEHTA for Petitioner No. 1-7
   MS KHERAWALA FOR MR BP TANNA for Respondent No. 1
   MR DM THAKKAR for Respondent No. 2-4
2. Special Civil Application No. 681 of 1991
   MR DM THAKKAR for Petitioner No. 1
   MS KHERAWALA FOR MR BP TANNA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/09/2004

ORAL JUDGEMENT

1. In Special Civil Application No.6038 of 1990, the petitioners who have failed in written examination have challenged the method adopted by Municipal Corporation for selection of Welfare Labour Officer, and prayed for quashing and setting aside the interview called and the test held by the Municipal Corporation and direct the respondent Corporation to held test in accordance with law.

2.0 Mr.Arun Mehta, learned Senior Counsel, for the petitioners has contended that the Constitution of the Selection Committee has not done in accordance with law, more particularly, Sec.54 of the Bombay Provincial Municipal Corporations Act, 1949, (hereinafter referred to as "the Act"). Sec.54 of the Act provides that the Staff Selection Committee shall consist of the Commissioner or any other officer designated by him in this behalf, the Municipal Chief Auditor, the Head of the Department concerned and not more than one other officer nominated by the Commissioner. Mr.Mehta contended that, in the present case, the Staff Selection Committee was not constituted as per Sec.54 of the Act.

2.1 The second contention raised by Mr.Mehta is that, the papers were examined by the persons who are not qualified under the prescribed norms and, therefore, injustice is done to the persons who have participated in the written test.

2.2 The third contention which was raised by Mr.Mehta is that, the marks of the oral were only taken into consideration and no other criteria was fixed by the respondent Corporation.

3.0 In other petition i.e. Special Civil Application No.681 of 1991, the petitioner who was successful in written test and who has secured highest marks in the written test and having failed in oral test has challenged the petition on the following grounds.

3.1 Mr.D.M.Thakkar, learned advocate for the petitioner has contended that the respondents have not fixed the criteria for each of the committee member to

give the marks. The interviews were conducted without there being any fixed norms, criteria, guidelines etc. for the purpose of allocating the marks to the candidates out of total 50 marks. Mr.Thakkar also contended that they should not have solely appointed the persons on the basis of viva test. Mr.Thakkar also contended that this method has resulted into arbitrariness and injustice done to the petitioner.

4.0 As against that, Ms.Kherawala, learned advocate for the respondents has submitted that, the Constitution of the Selection Committee was done by the Municipal Commissioner as per Sec.54 of the Act, and the Staff Selection Committee is consisting of Dy.Municipal Commissioner (Administration), who is the Head of the Department, Municipal Chief Auditor, who is also one of the Committee Member and other Dy.Municipal Commissioners who were in charge of Health and C&T Department, and thus the Constitution of the Selection Committee was done by the Corporation in accordance with Sec.54 of the Act.

4.1 Ms.Kherawala also contended that, with a view to see that no pressure is brought on any of the persons, the papers were examined in presence of Dy.Municipal Commissioner in his office, and since the papers are in short objective type, they are not required for special knowledge, and the persons who are next to the Head of the Department had examined the papers and, therefore, there is no irregularity committed by the respondent Corporation. Ms.Kherawala also contended that the petitioners have participated in the examination cannot dispute the method of selection.

5.0 Mr.Mehta, learned Counsel for the petitioners has relied on the judgment of the Apex Court in the case of Praveen Singh Vs. State of Punjab and others reported in AIR 2001 SC 152, particularly paras 8 and 9 which reads as under"

> "While it is true that the administrative or quasi-judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fairplay, good conscience and equity. This Court in the case of J.P.Kulshreshtha v. Chancellor, Allahabad University, AIR 1980 SC 2141 : (1980 Lab IC 692 : 1980 All LJ 571) did recognise the undetectable manipulation of results being achieved by remote control tacits

and masked as viva voce test resulting (in) the sabotaging of the purity of proceedings. This Court held "interviews as such are not bad but polluting it to attain illegitimate ends is bad."

"What does Kulshreshtha's case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly is a significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings". A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In Ashok Kumar's case, Ashok Kumar Yadav v. State of Haryana, (1985) 3 Serv LR 200 : (AIR 1987 SC 454 : 1986 Lab IC 1417), this Court however in not uncertain terms observed : There can therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact test the man himself and is therefore, regarded as an important tool along with the written examination."

5.1 Mr.Mehta has also relied on the decision of this Court in the case of State of Gujarat Vs. Shantilal Mangaldas and others reported in 1969 (10) GLR 879, particularly on page 905 the Court has observed as under:

".... Land required for any of the purposes of a town-planning scheme cannot be acquired otherwise than when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all: Taylor v. Taylor, (1875) I. Ch.D. 426. Again it cannot be said that because it is possible for the State, if so minded, to acquire land for a public purpose of a local authority, the statutory effect given to a town-planning scheme results in discrimination between persons similarly circumstanced."

5.2 In that view of the matter, Mr.Mehta has contended that the Constitution of the Committee is bad and selection is done which was not competent to conduct the interview. In my view, the Constitution of the Committee was done in accordance with Sec.54 of the Act, and therefore, the issue of the Hon'ble Supreme Court in the above referred judgment of Shantilal's case will not apply and the same will not be helpful to the case of the petitioners.

5.3 Even in the case of Praveen Singh Vs. State of Punjab reported in AIR 2001 SC 152, in para 8 the Hon'ble Supreme Court has observed as under:

> ".... While it is true that the administrative or quasi judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fairplay, good conscience and equity. This Court in the case of J.P.Kulshreshtha v. Chancellor, Allahbad University, AIR 1980 SC 2141 : (1980 Lab IC 692 : 1980 All LJ 571) did recognise the undetectable manipulation of results being achieved by remote control tacits and masked as viva voce test resulting (in) the sabotaging of the purity of proceedings. This Court held "interviews as such are not bad but polluting it to attain illegitimate ends is bad."

6.0 Mr.Thakkar has relied on the judgment of this Court in the case of Dr.B.M.Rana and others Vs. Ahmedabad Municipal Corporation and others reported in 1975 Vol.16 GLR 1039, particularly para 7 which reads as under:

> "Appointments made without regard to these salutary principles can scarcely inspire confidence that the equality principle has been faithfully observed for in the absence of these norms how can any one posit that extraneous considerations like influence, pull, likes, dislikes, favourtism, nepotism, casteism, communism, arbitrariness and caprice have not operated on the minds of the selectors. It may be reiterated that not only the equality principle should in fact operate it must also appear to have operated, and unless there are guidelines, is there any guarantee that the selector is not carried away by any of the

aforesaid non-germane considerations or even by bias arising from impressionableness."

6.1 Mr.Thakkar has also relied on another decision of this Court in the case of Shantilal Ambalal Panchal and another Vs. State of Gujarat and others reported in 1984 GLH 217. Mr.Thakkar submitted that no proper criteria laid down which has given room for arbitrariness to the respondents and therefore the selection procedure are required to be cancelled. In my view, the Municipal Corporation has followed the prescribed procedure and they have defined all criteria which was known to the Committee Member and that has been uniformly apply in all cases and there is no arbitrariness as claimed by the petitioners, and it is not the case of the petitioners that different method will be given to the petitioners against the selected candidates and, therefore, the ratio of the aforesaid judgment will not apply in the present case.

6.2 Mr.Thakkar has also relied on the judgment of the Apex Court in the case of Praveen Singh Vs. State of Punjab and others reported in (2000) 8 SCC 633 where it has been held that making interview the only criteria for selection, always leaves a room for suspicion. The posts of BDO or Panchayat Officer for which thousands of candidates apply, interview alone is not a satisfactory method of selection. In my view, the procedure adopted by the respondent Corporation first holding written test and then calling the persons who are qualified in the written test and conducting interview by the three highest officers and in presence of Chief Auditor, and therefore, the ratio of the above referred judgment will not apply in the present case.

7.0 Ms.Kherawala, learned advocate for the respondents has relied on the judgment of the Apex Court in the case of Dr.G.Sarana Vs. University of Lucknow and others reported in AIR 1976 SC 2428 particularly para 16 which reads as under:

" It is also difficult to understand how the writ petition or for that matter the present appeal before us is maintainable when the recommendation of the Selection Committee has still to be scrutinized by the Executive Council of the University and either accepted or rejected by it and other remedies by way of representation to the Executive Council and an application for reference of the matter under Section 68 of the Uttar Pradesh Universities (Re-enactment and

Amendment) Act, 1974 to the Chancellor are still open to the appellant and have not been exhausted."

7.1 Ms.Kherawala, learned advocate for the respondents has also relied on another judgment of Apex Court in the case of Madan Lal and others Vs. State of Jammu and Kashmir and others reported in AIR 1995 SC 1088, particularly paras 9, 15 and 16 which reads as under:

" Therefore, the result of the interview test on merits cannot be successfully challenge by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

" It is difficult to appreciate this contention. Rule 10(1)(b) to which we made reference earlier nowhere provides that tape-recording should be kept of questions put by the members of the committee and the answers given by the concerned candidates at the oral interview and that in the absence of such tape-recording the interview process would fail. The learned senior counsel for the petitioners in this connection invited our attention to a Constitution Bench decision of this Court in the case of Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : (AIR 1981 SC 487). That was a case in which the Constitution Bench dealt with the claim of

petitioners for admission in B.E. course. The candidates had appeared in written test and then they were called for oral interview. Rejecting the contention of the petitioners that the oral test was defective, it was observed that oral interview is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. However, in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be restored to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification. It is to be kept in view that Bhagwati, J. as he then was, speaking for the Court in that case ultimately dismissed the petitions subject to certain general observations and directions. So far as tape-recording is concerned, as one of the contentions of the petitioners was that the oral interview was held in an arbitrary and slipshod manner, an observation was made in para 20 of the report to the effect that it would also be desirable if the interview of the candidates is recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee. These observations cannot be read to mean that in the absence of tape-recording of questions and answers the interview process would fail or the result of the interview process would get vitiated. In the very writ petitions decided by the Constitution Bench, even though there was no tape-recording of questions and answers, interview test was upheld. It appears that the aforesaid observation only suggests a better method for insulating oral interviews against possible future attacks of

arbitrariness and nothing more. Consequently, it cannot be said that merely because there is nothing on the record to show that any tape-recording of questions and answers at the interview was done, the viva voce test should on that score fail. Therefore, this contention also stands rejected."

"In the light of what is stated above, that while dealing with contention No.1, this contention also must fail. The petitioners subjectively feel that as they had fared better in the written test and had got more marks therein as compared to concerned selected respondents, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of concerned candidates by the expert committee before whom these candidates appeared for the viva voce test. Merely on the basis of the petitioners' apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the members of the interview committee against the petitioners. They have also not alleged any mala fides on the part of the interview committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the concerned respondents. It cannot be the subject matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. In the light of the affidavit in reply filed by Dr.Girija Dhar to which we have made reference earlier, it cannot be said that the expert committee had given a deliberate unfavourable treatment to the petitioners. Consequently, this contention also is found to be devoid of any merit and is rejected."

7.2 In view of this, it is clear that the allegations based on mere suspicion having no factual basis and

process of assessment cannot be vitiated when there were no allegations of bias or mala fides against member of interview committee.

7.3 Ms.Kherawala, learned advocate for the respondents has also relied on another judgment of Apex Court in the case of Suneeta Aggarwal Vs. State of Haryana and others reported in (2000) 2 SCC 615 more particularly para 4 on page 617 the Hon'ble Supreme Court has observed as under:

> "... The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant. The writ petition was rightly dismissed."

7.4 Ms.Kherawala has submitted that the issue is squarely covered by the decision of this Court in the case of A.K.Shimpi and others Vs. State of Gujarat and others reported in 1983-1 Vol.24 GLR 398, where on page 398 this Court has observed as under:

> "HELD : In a petition under Article 226 of the Constitution, the Court does not sit in appeal over the decision of a Selection Committee. However, the selection procedure adopted by the Committee is open to judicial-scrutiny. If it is found that the mode or method of selection was arbitrary, irrational, unreasonable, irrelevantly, biased or vitiated by mala fides or contrary to the rules and regulations, the Court will have the power, indeed duty, to quash the selections, because of the mandate of Articles 14 and 16. In this connection a few of the factors or considerations which must enter into account, if and when the selections are challenged, are:-
>
> (a) Whether the selected candidate is shown to have possessed the requisite eligibility qualifications;
>
> (b) Whether the adjudgement of the suitability of the competing candidates is shown to have been made according to some rational and relevant norms which were prescribed in advance and made known

to all the members of the Selection Committee;

(c) Whether there was relevant material before the Selection Committee on the basis of which it could have arrived at a fair decision as to the satisfaction of the norms in the case of the selected candidates;

(d) Whether the norms were uniformly applied in case of all the competing candidates;

(e) Whether a rational and relevant formula relating to the qualification and assessment of marks was adopted or whether the method of marking was chosen with an oblique motive; and

(f) Whether the procedure of selection was otherwise fair and proceedings of the Selection Committee were not biased or vitiated by mala fides."

8. In my view, the respondent Corporation has not committed any breach of guidelines as directed by this Court in the aforesaid case of A.K.Shimpi and others (supra). Having considered the aforesaid facts and circumstances of the case and having gone through the aforesaid judgments cited by the learned advocates for the petitioners as well as for the respondents, I am of the view that no case is made out by the learned advocate for the petitioners, and further this Court is not sitting over an appeal, and therefore both the petitions are required to be dismissed and accordingly the same are dismissed with no order as to costs. Rule is discharged in both the petitions.

(K.S. Jhaveri, J.)

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